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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

CHASOM BROWN, et al., individually and  
on behalf of all similarly situated,,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S CORRECTED MOTION  
TO STRIKE EXHIBIT A TO MAO  
DECLARATION IN SUPPORT OF  
PLAINTIFFS' ADMINISTRATIVE  
MOTION FOR SANCTIONS (DKT. 671-3)**

Referral: Hon. Susan van Keulen, USMJ

1     **I. INTRODUCTION**

2           Seeking to grant themselves an enlargement of the five-page limit that applies to  
 3 administrative motions filed with this Court, Plaintiffs impermissibly augment their sanctions  
 4 briefing (Dkt. 671–2) with a six-page “summary chart” replete with arguments and conclusions that  
 5 violate the Local Rules. *See* Declaration of Mark Mao (the “Mao Declaration”), Ex. A (“Exhibit  
 6 A”) (Dkt. 671–3) (claiming to summarize the 15 documents cited in Plaintiffs’ sanctions motion and  
 7 explain their “relevance” and how they purportedly “support Plaintiffs’ claims and undermine  
 8 Google’s defenses”). In doing so, Plaintiffs run afoul of Local Rule 7–5(b), which states that a  
 9 motion’s supporting “affidavit or declaration may contain only facts ... and must avoid conclusions  
 10 and argument.” L.R. 7–5(b).

11           Plaintiffs attempt to create an end-run around the page limit set by this Court’s Local Rules  
 12 (after strategically choosing to pursue severe sanctions against Google under the guise of a Rule 7–  
 13 11 motion, on an expedited schedule, with shorter page limits), by appending the very types of non-  
 14 factual information that Local Rule 7–5(b) expressly prohibits, warrants that Exhibit A to the Mao  
 15 Declaration be stricken from the record.

16     **II. ARGUMENT**

17           Plaintiffs describe Exhibit A to the Mao Declaration as “summarizing fifteen documents”  
 18 that Google produced after the close of fact discovery. Dkt. 672-1 ¶ 16.<sup>1</sup> But nothing in this Court’s  
 19 Local Rules or the Federal Rules permit the insertion of a multi-page chart into an attorney  
 20 declaration in an attempt to circumvent applicable page limitations. Not only are these “summaries”  
 21 unnecessary—particularly where Plaintiffs attach a true and correct copy of each document for the  
 22 Court’s consideration—they violate Local Rule 7–5 because they are not based on the declarant’s  
 23

24 \_\_\_\_\_  
 25 <sup>1</sup> However, Plaintiffs are incorrect that Google “withheld as privileged [all 15 documents listed in Exhibit  
 26 A] and as a result only produced [them] to Plaintiffs within the last three months, after the close of fact  
 27 discovery, pursuant to this Court’s re-review orders” and therefore should have been produced last year  
 28 Dkt. 672 at 1; Dkt. 672-1 ¶ 16. Not all 15 of the exhibits were withheld for privilege, or produced pursuant  
 to the re-review orders. In fact, GOOOG-CABR-04780837.R was produced as GOOG-BRWN-00157001  
 on June 18, 2021. And while GOOG-BRWN-00857642 was initially withheld as privileged and produced  
 pursuant to the Court’s re-review order, it originated from Bert Leung’s custodial files—which were  
 collected and reviewed in February 2022 pursuant to an agreement between the parties in mid-February  
 2022, so it could not have been produced last year (*see* Dkt. 406).

1 personal knowledge. *See* L.R. 7–5(b) (“An affidavit or declaration may contain *only facts* ... and  
 2 must avoid conclusions and argument.”) (emphasis added). This violation alone is a sufficient basis  
 3 to strike the entire Mao Declaration.

4 In further violation of the Rule 7–5(b), Exhibit A includes a column with what Plaintiffs  
 5 contend is the “[r]elevance” of each exhibit they purport to “summarize.” Ex. A at 1–3. But these  
 6 assertions are nothing more than improper “conclusions and [attorney] argument.” L.R. 7–5(b).  
 7 *See, e.g.*, Ex. A at 1 (arguing that Ex. 2 is relevant because it “supports Plaintiffs’ claims and also  
 8 undermines Google’s assertion in a 2021 submission to the Special Master”); *id.* at 2 (arguing that  
 9 Ex. 4 is relevant because “Google expert Paul Schwartz purports to disregard as irrelevant whether  
 10 Google can ‘identify an individual using non-Google Account linked data through  
 11 ‘fingerprinting’”); *id.* (arguing that Ex. 3 is relevant because it “supports Plaintiffs’ claims and  
 12 undermines Google’s consent defense”); *id.* (arguing that Ex. 5 is relevant for the same reason).

13 Numerous courts in this District have stricken attorney declarations and summary charts  
 14 such as this one that are rife with legal arguments and conclusions. *See, e.g.*, Dkt. 588 at 3–4 (striking  
 15 portions of Mao declarations that “contain[ed] conclusions and arguments in violation of Civil Local  
 16 Rule 7-5(b)”; *Page v. Children’s Council*, 2006 WL 2595946 at \*5 (N.D. Cal. Sept. 11, 2006)  
 17 (several paragraphs of an attorney declaration were stricken pursuant to L.R. 7–5 for containing  
 18 “improper argument”); *Brae Asset Funding, L.P. v. Applied Financial, LLC*, 2006 WL 2355474 at  
 19 \*5 (N.D. Cal, Aug. 14, 2006) (attorney declaration was stricken in its entirety under L.R. 7–5 for  
 20 being “full of legal argument and conclusions,” among other local rule violations); *see also Percelle*  
 21 *v. Pearson*, 2015 WL 5736399 at \*3 (N.D. Cal. Oct. 1, 2015) (striking portions of a declaration  
 22 under L.R. 7–5 which “purports to summarize deposition transcripts and exhibits—summaries  
 23 which, upon review, turn out to be inaccurate”); *Kennedy v. AJVS, Inc.*, No. C11-1231 MJP, 2012  
 24 WL 1748013 at \*4–5 (N.D. Cal. May 15, 2012) (striking declaration which “includes unnecessary  
 25 and apparently inaccurate commentary regarding the exhibits”).

26 Plaintiffs cannot reasonably dispute that Exhibit A appends argument to their briefing, and  
 27 thus “circumvent[s] the page limits set forth in the Civil Local Rules.” *Montfort*, 2019 WL 6311378  
 28 at \*4. This is especially true where (as here) virtually all of their “relevance” arguments appear

nowhere in the body of their Motion. *Compare* Ex. A (summarizing each exhibit) *with* Mot. 1–5 (omitting any substantive discussion of Exs. 2, 3, 4, 5, 7, 8, 9, 13, 14, or 15); *see also id.* (omitting any reference to Ex. 16, the Amir Report); *id.* (omitting any reference to Ex. 17, the Strombom Report). Nor can Plaintiffs claim that Exhibit A is not “full of legal argument and conclusions.” *Brae*, 2006 WL 2355474 at \*5. *See, e.g.*, Ex. A at 1 (“Google’s experts seek to present Plaintiffs and class members as people who would understand Google’s collection of private browsing information”); *id.* at 2 (“Google’s experts seek to present Plaintiffs and class members as people who would understand Google’s ads universe”); *id.* at 3 (arguing that “even Google’s own employees were unaware of Google’s collection of private browsing information”).

Because the entire chart embeds misleading attorney characterizations of the discovery record, and contains self-serving conclusions as to what the discovery record purportedly shows, it is improper and should not be considered by this Court in resolving the pending motion.

### III. CONCLUSION

For the foregoing reasons, Exhibit A to the Mao Declaration should be stricken from the record pursuant to Local Rule 7–5(b).

DATED: November 10, 2022

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